

IN THE COURT OF APPEALS OF TENNESSEE  
AT JACKSON  
December 14, 2000 Session

**RUDOLPH POWERS v. SGT. JOEL SMITH, ET AL.**

**An Appeal from the Circuit Court for Lake County  
No. 00-8010     Russell Lee Moore, Jr., Judge**

---

**No. W2000-02290-COA-R3-CV - Filed September 4, 2001**

---

This is an appeal by a prisoner plaintiff seeking review of a disciplinary action by prison officials. The trial court dismissed plaintiff's petition for review because he failed to file it within sixty days as required by Tennessee Code Annotated § 27-9-102. On appeal, we affirm.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed**

HOLLY KIRBY LILLARD, J., delivered the opinion of the court, in which W. FRANK CRAWFORD, P.J., W.S., and ALAN E. HIGHERS, J., joined.

Rudolph Powers, Tiptonville, Tennessee, Pro Se.

Paul G. Summers, Attorney General and Reporter, Michael E. Moore, Solicitor General, and Terri L. Bernal, Assistant Attorney General, for the appellees, Sgt. Joel Smith, Warden Fred Raney, and Commissioner Donal Campbell.

**MEMORANDUM OPINION<sup>1</sup>**

In this case, Rudolph Powers, an inmate in the Northwest Correctional Complex in Tiptonville, Tennessee, filed a petition in Circuit Court seeking review of an action by the disciplinary board at the prison. The disciplinary board sanctioned Powers for refusing to participate in his job. Powers appealed the board's action to Fred Raney, the Warden, who upheld the board's action. Powers then appealed to the Commissioner of the Department of Corrections. Jim Rose, the

---

<sup>1</sup>Rule 10 of the Rules of the Court of Appeals of Tennessee states:

This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION", shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

assistant Commissioner for the Department of Corrections, notified Powers on December 13, 1999, that his appeal was denied.

On March 16, 2000, Powers filed a petition for review in Lake County Circuit Court. The respondents, Sgt. Joel Smith, the head of the disciplinary board, Warden Fred Raney, and Commissioner Donal Campbell, filed a motion to dismiss arguing, *inter alia*, that Powers's petition should be dismissed because he failed to file it within sixty days as required by Tennessee Code Annotated § 27-9-102 (2000). Along with their motion to dismiss, the respondents filed the affidavit of Dennis Talley, an Executive Administrative Assistant at the Department of Corrections, who testified that Assistant Commissioner Jim Rose responded to Powers's appeal on December 13, 1999. Because the respondents filed Talley's affidavit with their motion to dismiss, the trial court treated the motion to dismiss as a motion for summary judgment. On August 29, 2000, the trial court granted summary judgment to the respondents, holding that Powers's petition was time-barred under Tennessee Code Annotated § 27-9-102. From this order, Powers now appeals.

In this case, the essential facts are undisputed. Since only questions of law are involved, we review the trial court's grant of summary judgment *de novo*, with no presumption of correctness. *See Warren v. Estate of Kirk*, 954 S.W.2d 722, 723 (Tenn. 1997).

Tennessee Code Annotated § 27-9-101 provides any person aggrieved by the decision of a board or commission functioning according to State law the opportunity to appeal that decision to State courts. *See* Tenn. Code Ann. § 27-9-101(2000). Section 27-9-102 states:

Such party shall, within sixty (60) days from the entry of the order or judgment, file a petition of certiorari in the chancery court of any county in which any one (1) or more of the petitioners, or any one (1) or more of the material defendants reside, or have their principal office, stating briefly the issues involved in the cause, the substance of the order or judgment complained of, the respects in which the petitioner claims the order or judgment is erroneous, and praying for an accordant review.

Tenn. Code Ann. § 27-9-102. Section 27-9-103 gives the Circuit Court concurrent jurisdiction over such proceedings. *See* Tenn. Code Ann. § 27-9-103 (2000). The sixty-day time period is mandatory; failure to file within sixty days renders the decision of the agency final, and the courts no longer have jurisdiction to review it. *See Thandiwe v. Traugher*, 909 S.W.2d 802, 804 (Tenn. Ct. App. 1994). Since Powers received notice on December 13, 1999, that the Commissioner had denied his request for an appeal, it is undisputed that Powers was required to file his petition for review no later than February 11, 2000. Powers failed to do so.

On appeal, Powers argues that he was denied the ability to file within the sixty-day period because the prison was in an "institutional lockdown," denying him access to the law library, notary service, and copy service during the critical time period. In support of his argument, he cites

documents showing that he tried to submit his petition before the expiration of the sixty-day time period. One document is a letter, signed by an unidentified person, stating:

To Whom It May Concern:

It is possible that the request for copies Mr. Rudy Powers #95360 stated that he submitted on 2/1/00 was not copied and returned to him until 2/20/00. No one can recall for certain. This was during the time of an institutional lockdown and copy requests were being submitted by many inmates, since this was their only method of access to legal material. It could have mistakenly been misplaced for a brief period; though, if so it would not be done intentionally.

7/28/00

Sincerely,

[Undecipherable signature]

Principal

This cannot toll the sixty-day mandatory period for appealing the disciplinary decision. The trial court was without jurisdiction to hear Powers's petition. Under these circumstances, we affirm the trial court's grant of summary judgment.

The decision of the trial court is affirmed. Costs on appeal are taxed to the Appellant, Rudolph Powers, and his surety, for which execution may issue if necessary.

---

HOLLY KIRBY LILLARD, JUDGE